



Possession Under An Executory Contract Is Not Adverse

Klein v. Meza, 4 So. 3d 51 (Fla. Dist. Ct. App. 2009)

Contracts: A prospective purchaser's continued occupancy of a condominium unit after her failure to make the payment called for in a contract for deed to purchase the unit does not constitute adverse possession under Florida law.

In January 2000, Kendall Acres Condominium Association sued Isobel Isserlis, the owner of unit G-5 in Kendall Acres Condominium, and Melania Meza, the occupant of the unit, to collect approximately \$3,400 in unpaid assessments. Before the action commenced, Isserlis died, and Linda Klein, Isserlis' only child and heir, was substituted for Isserlis in the association's suit. Klein counterclaimed, asserting the association's malicious prosecution, slander of title and abuse of process.

In 1991, Meza entered into a contract for deed with Isserlis to purchase unit G-5. She claimed that she had paid the assessments, and the association had made a bookkeeping error. Within weeks after the association's action commenced, a balloon payment of \$44,800 that Meza was required to make to Isserlis under the terms of the contract for deed for unit G-5 became due. Meza never made this payment, which was necessary for her to acquire title, but continued to occupy unit G-5 and pay the same monthly payment that was required under the contract for deed.

In August 2004, the trial court began to question whether Klein was a proper party to the association's suit. To address this concern, Klein had Meza execute a quitclaim deed prepared by her attorneys conveying title to unit G-5 to Klein. Meza afterward realized Klein and her attorneys were not representing her interests and hired her own lawyers. She sued Klein claiming (i) that she had become the owner of the unit by adverse possession; (ii) that Klein had illegally terminated the contract for deed; and (iii) that the 2004 quitclaim deed she executed was invalid.

In response to Meza's claim about the validity of the 2004 quitclaim deed, Klein asserted ownership of the unit under a deed purportedly executed by Isserlis in 1997. Although Klein claimed this deed was witnessed and notarized in 1997, when it was signed, later testimony proved this was a lie.

Based on Meza's claim that she, Klein's former housekeeper, with little knowledge of English, had relied on Klein, an experienced real estate investor and broker, in not making the balloon payment due under the contract for deed and in executing the 2004 quitclaim deed and Klein's purported attempt to perpetrate a fraud on the court with regard to the 1997 deed, the trial court entered a default judgment against Klein and then entered final judgment invalidating both deeds and quieting title in Meza on her adverse possession claim. Klein appealed.

At the beginning, the appeals court noted that the trial court's rulings concerning the validity of the 1997 and 2004 deeds had no bearing on the outcome of the case. The court explained that, even if the 1997 deed were invalid, title remained vested in Isserlis' estate, and Klein, as the sole heir, was entitled to enforce the contract for deed unless Meza was legally excused from performing under the contract. Likewise, even if the 2004 deed were invalid, the fact remained that Meza never made the balloon payment required under the contract of deed to take title to the unit.

Meza established for the court that she was in possession of unit G-5 from January 1991 until February 2000, pursuant to the written contract of deed. However, the court explained that both Section 95.18 of the Florida statutes and Florida case law make clear that, "possession under an executory contract is not adverse . . ." Likewise, Meza's continued occupancy following her failure in February 2000 to make the balloon payment did not constitute adverse possession under Section 95.18 because she reverted to her status as a tenant, making monthly payments to Klein, which Klein accepted. The court found, therefore, that Meza had neither alleged nor proved facts that would entitle her to fee simple ownership of unit G-5 without paying the balance of the agreed purchase price.

Because the court found no evidence to support a judgment in Meza's favor, it reversed the trial court's ruling and remanded the case with instructions that the trial court determine whether any basis exists for forgiving Meza's failure to comply with the contract of deed; and, if so, what reasonable time period would be sufficient for her to secure financing to make the balloon payment, suggesting that this would also provide the trial court with an opportunity to determine what, if any, sanction should be imposed on Klein for her fraudulent representations regarding the 1997 deed.

The appeals court also ordered the trial court to determine, on remand, to whom the balloon payment should be made.

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